

MEDICAL CONTESTED CASE HEARING NO. 14057

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUES

A contested case hearing was held on April 4, 2014 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to modifications and equipment for a vehicle for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Claimant appeared and was represented by MS, attorney.

Respondent/Carrier appeared and was represented by SS, attorney.

BACKGROUND INFORMATION

Claimant sustained a C7 quadriplegic spinal cord injury when he fell off of a train on (Date of Injury). According to his treating doctor, Dr. JB, Claimant has limitations including weakness of the hands and arms and paralysis of all lower extremities. Claimant uses a motorized wheelchair and has been trained to operate and drive a wheelchair-accessible vehicle. Claimant obtained a new wheelchair because the old wheelchair is rusted and worn. According to Claimant's testimony, the old wheelchair causes pressure ulcers on his body due to the inability to shift his weight while seated in the wheelchair. The new wheelchair does not fit into his current vehicle and his current vehicle cannot be modified to fit his new wheelchair. Claimant purchased a new vehicle on September 2, 2013.

Dr. B has recommended that Claimant be provided with a vehicle that is modified to allow him to access and drive it while occupying his wheelchair. Dr. B referred Claimant to Adaptive Driving Access for an evaluation to determine what vehicle modifications were needed in order to allow Claimant to enter, exit, and drive the vehicle while in a wheelchair. The evaluator, Jason Roberts, provided specific recommendations which Dr. B concurred were medically necessary.

As noted earlier, Claimant purchased a new vehicle on September 2, 2013. Dr. B submitted a request for modifications and equipment for a vehicle to the insurance carrier. Dr. B's request was denied twice by the carrier's utilization review agents and their denial was upheld by the Independent Review Organization (IRO).

DISCUSSION

Texas Labor Code Section 408.021 provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) as health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with evidence based medicine or, if evidence based medicine is not available, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts and treatment and practice guidelines. The Commissioner of the Division of Workers' Compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused, and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the ODG. Also, in accordance with Division Rule 133.308(s), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is considered a party to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence."

With regard to durable medical equipment, the ODG provides as follows:

Recommended generally if there is a medical need and if the device or system meets Medicare's definition of durable medical equipment (DME) below. Most bathroom and toilet supplies do not customarily serve a medical purpose and are primarily used for convenience in the home. Medical conditions that result in physical limitations for patients may require patient education and modifications to the home environment for prevention of injury, but environmental modifications are considered not primarily medical in nature. Certain DME toilet

items (commodes, bed pans, etc.) are medically necessary if the patient is bed- or room-confined, and devices such as raised toilet seats, commode chairs, sitz baths and portable whirlpools may be medically necessary when prescribed as part of a medical treatment plan for injury, infection, or conditions that result in physical limitations. Many assistive devices, such as electric garage door openers, microwave ovens, and golf carts, were designed for the fully mobile, independent adult, and Medicare does not cover most of these items. See also specific recommendations here: Aquatic therapy; Bathtub seats; BioniCare® knee device; Bone growth stimulators; Braces; Canes; Cold/heat packs; Compression cryotherapy; Continuous-flow cryotherapy; Continuous passive motion (CPM); Crutches; Cryocuff; Cryotherapy; Dynamic splinting systems; Dynasplint; Electrical stimulators (E-stim); Electromyographic biofeedback treatment; ERMI knee Flexionater®/ Extensionater®; Flexionators (extensionators); Exercise equipment; Game Ready™ accelerated recovery system; Home exercise kits; Joint active systems (JAS) splints; Knee brace; Lymphedema pumps; Mechanical stretching devices (for contracture & joint stiffness); Motorized scooters; Neuromuscular electrical stimulation (NMES devices); Orthoses; Post-op ambulatory infusion pumps (local anesthetic); Power mobility devices (PMDs); RS-4i sequential stimulator; Scooters; Shower grab bars; TENS (transcutaneous electrical nerve stimulation); Therapeutic knee splint; Treadmill exerciser; Unloader braces for the knee; Vacuum-assisted closure wound-healing; Vasopneumatic devices (wound healing); Walkers; Walking aids (canes, crutches, braces, orthoses, & walkers); Wheelchair; Whirlpool bath equipment.

The term DME is defined as equipment which:

- (1) Can withstand repeated use, i.e., could normally be rented, and used by successive patients;
- (2) Is primarily and customarily used to serve a medical purpose;
- (3) Generally is not useful to a person in the absence of illness or injury; &
- (4) Is appropriate for use in a patient's home. (CMS, 2005)

The IRO stated that adaptations to a vehicle would be indicated provided the Claimant had significant functional deficits that warrant the need for appropriate vehicle adaptations. The IRO acknowledged that Claimant has a spinal cord injury, but stated that there was no objective data confirming the need for the vehicle adaptations. Therefore, the IRO found that the request for modifications and equipment for a vehicle was not medically necessary.

The preponderance of the evidence-based medical evidence is contrary to the opinion of the IRO. The medical records in evidence include a behind-the-wheel evaluation that was performed by Strowmatt Rehabilitation Services on November 19, 2012. The report provides an analysis of

Claimant's ability to drive. The report also discusses how Claimant transfers from his wheelchair to the vehicle. The report concludes with detailed recommendations for vehicle adaptation.

The medical evidence from Dr. B and occupational therapy notes discuss Claimant's medical condition and the medical reasons why Claimant is in a wheelchair. The occupational therapy reports discuss how Claimant's ability to transfer and move himself changes over time due to his age and spinal cord injury. Dr. B states that Claimant's spinal cord injury results in weakness and impairment that require the use of a power wheelchair. Dr. B states that Claimant's ability to move and transfer himself has decreased due to spasticity and calcium between the bones. Therefore, it is his medical opinion that it is medically necessary that Claimant occupy his wheelchair while driving.

Claimant is a quadriplegic who must use a wheelchair at all time for mobility. Because he is wheelchair bound, Claimant must have a wheelchair-accessible vehicle. The medical records and evaluations contained in the evidence are objective evidence of the medical necessity of the modifications and equipment that are needed for Claimant's vehicle. Claimant has established by a preponderance of the evidence-based medical evidence that the modifications and equipment for a vehicle are reasonable and necessary for his compensable injury. Therefore, a decision and order in his favor is appropriate.

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

FINDINGS OF FACT

1. The parties stipulated to the following facts:
 - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On (Date of Injury), Claimant was the employee of (Employer), Employer.
 - C. Claimant sustained a compensable injury on (Date of Injury).
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Modifications and equipment for a vehicle is health care reasonably required for the compensable injury of (Date of Injury).

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is contrary to the decision of the IRO that modifications and equipment for a vehicle is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Claimant is entitled to modifications and equipment for a vehicle for the compensable injury of (Date of Injury).

ORDER

Carrier is liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218**

Signed this 11th day of April, 2014.

Jacquelyn Coleman
Hearing Officer